IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jayantilal R.Dave v. State of Raj. & Anr.

S.B.CIVIL WRIT PETITION NO.1130/1998
under Article 226 of the Constitution of India.

Date of Order : 21st November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mrs. Pratishtha Dave, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. Sangeet Lodha, for the respondents.

BY THE COURT :

The petitioner by this petition for writ claimed for a direction to the State Government for grant of pension against the services rendered by him with the Department of Transport from 6.9.1950 to 31.10.1966. The petitioner has also sought a direction for respondent Rajasthan State Road Transport Corporation to allow pension after adjusting contributory provident fund already paid on his retirement.

The facts in brief giving rise to present writ petition are as follows:-

The petitioner entered in the services of Rajasthan State Road Transport Corporation on 6.9.1950. He remained in services of Government of Rajasthan upto 31.10.1966 and thereafter his services stood absorbed with the services of Rajasthan State Road Transport Corporation.

At the time of absorption of services with Rajasthan State Road Transport Corporation the petitioner under an option letter dated 15.5.1966 opted for application of the provisions of contributory provident fund scheme and specifically scored out the option for getting pension. The petitioner on acquiring the age of 55 years stood retired from services on 30.9.1983. The Rajasthan State Road Transport Corporation under a memorandum dated 27.6.1984 allowed one more opportunity to its employees who stood retired after 1.9.1981 to opt for pension scheme in place of contributory provident fund scheme. The petitioner in pursuant to the memorandum dated 27.6.1984 submitted an option on 4.9.1984 opting for pensionary benefits. No pension was allowed to the petitioner, therefore, he preferred present writ petition claiming the pension in the terms stated in preceding paras.

A reply to the writ petition has been filed on behalf of the Rajasthan State Road Transport Corporation stating therein that the effect to the memorandum dated 27.6.1984 was not given and the same was ultimately withdrawn vide office order dated 1.10.1986. By way of filing an additional affidavit sworn in by officer-in-charge of the case a specific statement is given on behalf of the Corporation that in pursuance of the memorandum dated 27.6.1984 the pension benefit was not extended to any employee of the Corporation. It is also stated on behalf of the Corporation that on retirement from services payment of gratuity and contributory provident fund was made to the petitioner. The payment of gratuity against the work done by the petitioner as an employee of the Government of Rajasthan was made under an office order dated 5.10.1999. In view of the factual position above the Corporation pressed for dismissal of the writ petition.

Heard counsel for the parties.

The first contention of counsel for the petitioner is that the petitioner served with the Government of Rajasthan for a period of more than 16 years and, therefore, he was entitled for getting pension. I do not find any force in the contention so raised as the petitioner himself at the time of his

absorption in services of the Corporation in quite unambiguous terms opted for contributory provident fund scheme.

The petitioner cannot claim pension in pursuant to the notification dated 27.6.1984 as the Corporation did not gave effect to it and ultimately withdrew the same on 1.10.1986. It is specifically stated on oath on behalf of the Corporation that no option was accepted by the Corporation under memorandum dated 27.6.1984 and benefit of pension was not extended to any employee in pursuant to that memorandum.

The Corporation paid gratuity in a tune of Rs.7880/- against the work done by the petitioner for a period of 16 years 1 month and 24 days with Rajasthan State Transport Department on 5.10.1999. The petitioner stood retired from service on 30.9.1983, as such the respondent Corporation paid gratuity to the petitioner after lapse of about 16 years from the date right to receive gratuity accrued. The respondent Corporation, therefore, is certainly liable to make the payment of interest on the amount of gratuity paid under the office order dated 5.10.1999, being paid at delayed stage.

In view of whatever discussed above the claim made by the petitioner in the writ petition is not

sustainable, however, he is declared entitled to receive interest on the gratuity amount i.e. of Rs.7880/- from 30.9.1983 to 5.10.1999 @ 10% per annum. The respondent Corporation is directed to make payment of interest to the petitioner within a period of three months from today.

With the directions above the instant writ petition is disposed of.

(GOVIND MATHUR),J.

kkm/ps.